

STATE OF MICHIGAN
COURT OF APPEALS

NANCY JOHNSON,

Plaintiff/Counter-Defendant-
Appellant,

v

LANTECH CUSTOM HOMES, L.L.C.,

Defendant/Counter-Plaintiff-
Appellee,

and

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

August 15, 2006

No. 259888

Wayne Circuit Court

LC No. 03-341869-CH

Before: Saad, P.J., and Jansen and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants under MCR 2.116(C)(10). We affirm in part, reverse in part, and remand for further proceedings.

A circuit court's grant of summary disposition is reviewed de novo, on the entire record, to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The construction and application of a court rule is a question of law that is reviewed de novo. *Wickings v Arctic Enterprises, Inc*, 244 Mich App 125, 133; 624 NW2d 197 (2000). Equitable issues are also reviewed de novo, although a court's findings of fact supporting its decision are reviewed for clear error. *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994).

When deciding a motion for summary disposition brought under MCR 2.116(C)(10), the circuit court must examine the documentary evidence presented and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996).

Plaintiff brought this action to quiet title to a parcel of property in Detroit. Plaintiff made substantial improvements to the property, allegedly in anticipation of acquiring the property through the city of Detroit's nuisance abatement program. However, the property was deeded to defendant Lantech Custom Homes, L.L.C. The circuit court determined that Lantech had good title to the property. Plaintiff does not challenge this determination, but argues that the circuit court erred in rejecting her claim for the value of the improvements under MCR 3.411(F)(3) without conducting an evidentiary hearing. We agree.

MCR 3.411 "applies to actions to determine interests in land under MCL 600.2932," i.e., actions to quiet title. MCR 3.411(A). An action to quiet title is equitable in nature. MCL 600.2932(5). According to MCR 3.411(B), a complaint to quiet title must allege the claimed interests of the various parties. However, the court rule does not require that a complaint include allegations concerning the value of any improvements. Rather, MCR 3.411(F) provides:

(1) Within 28 days after the finding of title, a party may file a claim against the party found to have title to the premises for the amount that the present value of the premises has been increased by the erection of buildings or the making of improvements by the party making the claim or those through whom he or she claims.

(2) The court shall hear evidence as to the value of the buildings erected and the improvements made on the premises, and the value the premises would have if they had not been improved or built upon. The court shall determine the amount the premises would be worth at the time of the claim had the premises not been improved, and the amount the value of the premises was increased at the time of the claim by the buildings erected and improvements made.

(3) The party claiming the value of the improvements may not recover their value if they were made in bad faith.

Thus, the court rule requires that the determination whether a claimant is entitled to be compensated for the value of improvements to the property is to be made *after* the court decides the issue of title. In this case, defendants' motion for summary disposition only addressed the question of title, and the circuit court erred by sua sponte deciding the additional question whether plaintiff was entitled to compensation for the value of the improvements when deciding the question of title. Furthermore, the fact that the circuit court readdressed the issue whether the improvements were made in bad faith in response to plaintiff's motion for reconsideration did not, in itself, cure the error.

On reconsideration, the circuit court stated that plaintiff's arguments were procedurally deficient because she was raising issues and arguments that she should have raised earlier. The circuit court stated that "having emphasized her claim to ownership earlier, she is not in a good position to now stress reimbursement for improvements instead." The court stated that it was "loath to grant reconsideration when evidence and argument that could have been raised earlier are first raised on reconsideration."

As previously observed, however, MCR 3.411(F)(1) specifically allows the losing claimant 28 days *after* the determination of title to make a claim for the value of the

improvements. Under the court rule, the fact that plaintiff's complaint alleged "a restitution claim of sorts" against the City was not relevant to her right to make a claim for the value of the improvements, once the circuit court determined that Lantech was the party that held good title to the property.

Lantech argues that the circuit court properly determined that the undisputed facts demonstrated that plaintiff acted in bad faith because she did not have an honest belief that she had an ownership interest in the property. We disagree.

Relying on *Ollig v Eagles*, 347 Mich 49; 78 NW2d 553 (1956), the circuit court stated that "a claim to reimbursement for improvements depends on showing that the actual owner at least acquiesced in the additions." In denying plaintiff's motion for reconsideration, the circuit court, again citing *Ollig*, *id.* at 61, stated that plaintiff "hardly qualifies as the type of improver who 'mistakenly, but in good faith, . . . has improved the land of another to the unjust enrichment of the latter.'"

In any event, the applicable test under MCR 3.411(F)(3) is whether the improvements "were made in bad faith." In *Taylor v Hurd*, 293 Mich 425, 428; 292 NW 862 (1940), our Supreme Court held that, under the statute then in effect, in order to recover the value of improvements, a claimant had to show "good faith," meaning "an honest belief of the occupant *in his right or title*" (emphasis added). See also *Petit v Flint & Pere Marquette R Co*, 119 Mich 492, 494; 78 NW 554 (1899) (noting that the statute "*affirms an equitable right*, and should receive no technical construction which will interfere with the purpose aimed at" [emphasis added]), and *Taylor*, *supra* at 428.

In addressing GCR 1963, 754.5, the predecessor of MCR 3.411, this Court stated in *Hogerheide v Hickey*, 2 Mich App 580, 584; 141 NW2d 357 (1966), that the court rule shifts the burden of proof and the emphasis from the original common-law inquiry of whether a claimant made improvements in good faith. "Whereas prior to the adoption of the court rule, except in case of mistake, the improver had to show . . . 'color of title', 'adverse possession' and 'good faith'; under the court rule the burden is on the owner (once the first two elements are established) to show 'bad faith.'" *Id.* The Court observed:

"Bad faith" has often been equated with fraud or overreaching. In this context, however, in light of the use of the term "good faith" in the prior decisions on the subject, we believe it is used here to signify simply a lack of "good faith." To construe it otherwise is to give the court rule the effect of changing substantive rights. We are persuaded it was not so intended. [*Id.*]

Thus, to recover under MCR 3.411, the party found to have title (Lantech) has the burden of proving that, in making the disputed improvements, the claimant (plaintiff) acted with a lack of good faith, i.e., without an honest belief in her "right or title."

The circuit court erred in refusing to hold a hearing under MCR 3.411. Accordingly, we reverse the portion of the circuit court's decision rejecting plaintiff's claim for the value of the improvements, and remand for further proceedings regarding whether the improvements were made in bad faith and, if necessary, a determination of the value of those improvements. The portions of the circuit court's decision granting summary disposition in favor of the city of

Detroit, and holding that Lantech has good title to the property, are not challenged on appeal and are affirmed.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Helene N. White